

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 500
93RD GENERAL ASSEMBLY

Reported from the Committee on Pensions, Veterans' Affairs and General Laws, April 7, 2005, with recommendation that the Senate Committee Substitute do pass.

1821S.07C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 162.700, RSMo, and to enact in lieu thereof nine new sections relating to family cost participation in the Missouri first steps program, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 162.700, RSMo, is repealed and nine new sections enacted in lieu thereof, to be known as sections 160.900, 160.905, 160.910, 160.915, 160.920, 160.925, 162.700, 208.144, and 376.1218, to read as follows:

160.900. 1. The state of Missouri shall participate in the federal Infant and Toddler Program, Part C of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Section 1431, et seq., and provide early intervention services to infants and toddlers determined eligible under state regulations.

2. The state agency designated by the governor as the lead agency shall be responsible for the administration and implementation of Part C of IDEA through a regional first steps system and shall promulgate rules implementing the requirements of Part C of IDEA consistent with federal regulations, 34 C.F.R. 303, et seq.

3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 160.900 to 160.920 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 160.900 to 160.920 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after July 1, 2005, shall be invalid and void.

160.905. 1. The lead agency shall establish a "State Interagency Coordinating Council" for the statewide infant and toddler system of early intervention services. The composition of the council shall include the members required under Part C of the IDEA consistent with federal regulations, 34 C.F.R.303.601, appointed by the governor.

2. The state interagency coordinating council shall meet at least quarterly and shall comply with chapter 610, RSMo.

3. The state interagency coordinating council shall advise and assist the lead agency pursuant to IDEA requirements, 34 C.F.R. 303.650 to 303.654.

4. The state interagency coordinating council shall assist the lead agency in the preparation and submission of an annual report to the governor and to the secretary of the United States Department of Education on the status of early intervention programs in the state and report any recommendations for improvements to the program.

5. The lead agency shall submit rules and regulations, other than emergency rules and regulations, to the council for review prior to the lead agency's final approval. The council shall review all proposed rules and regulations and report its recommendations thereon to the lead agency within thirty days. The lead agency shall respond to the council's recommendations providing reasons for proposed rules and regulations that are not consistent with the council's recommendations.

160.910. 1. The lead agency shall maintain a statewide infant and toddler system of early intervention services under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. Section 1431, et seq., for eligible children and families of such children which shall be administered through the regional infant and toddler early intervention system.

2. The lead agency shall compile data in the system on the number of eligible children in the state in need of early intervention services, the number of eligible children and their families served, the types of services provided, and other information as deemed necessary by the agency.

3. The statewide system shall include a comprehensive child-find system and public awareness program to ensure that eligible children are identified, located, referred to the system, and evaluated for eligibility.

4. The lead agency shall monitor system expenditures for administrative services and regional offices to ensure maximum utilization of state funds for all children determined to be eligible for early intervention services. The lead agency

or its designee shall provide regional offices with the necessary financial data to assist regional offices in monitoring their expenditures and the cost of direct services. This data must include the number of children eligible from the most recent child count from that region and monthly data reports on the costs spent by providers in their network.

5. The lead agency shall establish a bidding process for determining regional offices across the state. The bidding process must establish criteria for allowing regions to implement models that will serve the unique needs of their community. This process shall encourage organizations bidding for a center to demonstrate agreements:

(1) With other state and local government entities that provide services to infants and toddlers with developmental disabilities including the department of mental health's division of mental retardation and developmental disability centers and senate bill 40 boards established under section 205.968, RSMo; and

(2) To collaborate with established, quality early intervention providers in the region to establish a network for early intervention services.

6. The lead agency shall establish a centralized system of provider enrollment to assure that all first steps providers meet minimal requirements per Part C regulations and the Missouri state plan.

160.915. 1. Each regional agency shall include in their proposal the following assurances and documentation of their plan to:

(1) Provide those functions that are specifically identified under federal and state regulations implementing Part C of IDEA, 20 U.S.C. Section 1431, as functions to be provided at public expense, with no cost to the parent;

(2) Contract with established community early intervention providers or hire providers as necessary to ensure all services are available and accessible within the region;

(3) Implement a system of provider oversight to ensure that all services are available and accessible within that region including the use of providers hired by the regional office where geographic necessity requires this practice;

(4) Implement a system of provider oversight to ensure corporate compliance by all providers in the regional center's provider network;

(5) Include in each child's individual family service plan family oriented approaches to support the child's developmental goals;

(6) Incorporate as the focus of the individualized family service plan best available practices and coaching approaches that support the family's capacity to meet the developmental needs of their child;

(7) Implementation of system of oversight to ensure providers uphold the

requirements of Part C of IDEA;

(8) Develop or maintain resources or utilize multiple funding sources for providing early intervention services for children with disabilities in the region for which they are bidding; and

(9) Implement a system for ritualization of assistive technology devices and oversight of assistive technology authorizations.

2. The lead agency may determine other assurances and request additional documentation they deem to be necessary and reasonable to achieve the purpose of this section and to comply with applicable federal law and regulation.

160.920. 1. No funds appropriated to the lead agency for the implementation and administration of sections 160.900 to 160.920 shall be used to satisfy a financial commitment for services that should have been paid from another public or private source. Federal funds available under Part C of the IDEA, 20 U.S.C. Section 1431, et seq., may be used whenever necessary to prevent the delay of early intervention services to the eligible child or family. When funds are used to reimburse the service provider to prevent a delay of the provision of services, the funds shall be recovered from the public or private source that has ultimate responsibility for the payment.

2. Nothing in this section shall be construed to permit any other state agency providing medically related services to reduce medical assistance to eligible children.

3. Payments for the provision of direct early intervention services to children and families shall be paid in the manner prescribed by the lead agency.

4. The lead agency shall promulgate rules for the reimbursement of services from all third-party payers, both private and public.

5. The lead agency or its designee shall, in the first instance and where applicable, seek payment from all third-party payers prior to claiming payment from the state infant and toddler system for services rendered to eligible children.

6. The first steps program may pay required deductibles, copayments, or other out-of-pocket expenses for a first steps child directly to a provider. A health benefits plan shall apply any payments made by the first steps program to the health benefit plan's deductibles, copayments, or other out-of-pocket expenses according to the terms and conditions of the health benefit plan.

7. The lead agency shall promulgate rules that establish a schedule of monthly cost participation fees for early intervention services per qualifying family regardless of the number of children participating or the amount of services provided. These fees shall not include services to be provided to the family at no cost as established in Part C of IDEA, 20 U.S.C. Section 1431, et seq. Fees shall be

based on a sliding scale to become effective October 1, 2005, that contemplates the following elements:

(1) Adjusted gross income, family size, financial hardship and Medicaid eligibility with the fee implementation beginning at two hundred percent of the federal poverty guidelines;

(2) A minimum fee amount of five dollars to the maximum amount of one hundred dollars monthly, with the lead agency retaining the right to revise the fee schedule no earlier than the third year after the family cost participation effective date;

(3) An increased fee schedule for parents who have insurance and elect not to assign such right of recovery or indemnification to the lead agency;

(4) Procedures for notifying the regional office that a family is not complying with the cost participation fee and procedures for suspending services.

8. All amounts generated by family cost participation, insurance reimbursements, and Medicaid reimbursement shall be deposited to the fund created in section 160.925.

9. The lead agency may assign the collection of early intervention participation fees, payments, and public or private insurance to a designee, contractor, provider, third-party agent, or designated clearinghouse participating in the early intervention system. Such fees, payments, or insurance amounts shall be paid to the department, its designee, contractor, provider, third-party agent, or designated clearinghouse in a timely manner. Notice of collection procedures, schedule of fees or payments, and guidelines for inability to pay shall be made available to parents of eligible children.

160.925. There is hereby created in the state treasury the "First Steps Fund" for implementing provisions found in sections 160.900 to 160.920. Moneys deposited in the fund shall be considered state funds under article IV, section 15 of the Missouri Constitution. The state treasurer shall be custodian of the fund and shall approve disbursements from the fund in accordance with sections 30.170 and 30.180, RSMo. Upon appropriation, money in the fund shall be used solely for the administration of sections 160.900 to 160.925. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund. The state treasurer shall invest moneys in the fund in the same manner as other funds are invested. Any interest and moneys earned on such investments shall be credited to the fund.

162.700. 1. The board of education of each school district in this state, except school districts which are part of a special school district, and the board of education of each special

school district shall provide special educational services for handicapped children three years of age or more residing in the district as required by P.L. 99-457, as codified and as may be amended. Any child, determined to be handicapped, shall be eligible for such services upon reaching his or her third birthday and state school funds shall be apportioned accordingly. This subsection shall apply to each full school year beginning on or after July 1, 1991. In the event that federal funding fails to be appropriated at the authorized level as described in 20 U.S.C. 1419(b)(2), the implementation of this subsection relating to services for handicapped children three and four years of age may be delayed until such time as funds are appropriated to meet such level. Each local school district and each special school district shall be responsible to engage in a planning process to design the service delivery system necessary to provide special education and related services for children three and four years of age with handicaps. The planning process [may] **shall** include public, private and private not-for-profit agencies which have provided such services for this population. The school district, or school districts, or special school district, shall be responsible for designing an efficient service delivery system which uses the present resources of the local community which may be funded by the department of elementary and secondary education or the department of mental health. School districts may coordinate with public, private and private not-for-profit agencies presently in existence. The service delivery system shall be consistent with the requirements of the department of elementary and secondary education to provide appropriate special education services in the least restrictive environment.

2. Every local school district or, if a special district is in operation, every special school district shall obtain current appropriate diagnostic reports for each handicapped child prior to assignment in a special program. These records may be obtained with parental permission from previous medical or psychological evaluation, may be provided by competent personnel of such district or special district, or may be secured by such district from competent and qualified medical, psychological or other professional personnel.

3. Where special districts have been formed to serve handicapped children under the provisions of sections 162.670 to 162.995, such children shall be educated in programs of the special district, except that component districts may provide education programs for handicapped children ages three and four inclusive in accordance with regulations and standards adopted by the state board of education.

4. For the purposes of this act, remedial reading programs are not a special education service as defined by subdivision (4) of section 162.675 but shall be funded in accordance with the provisions of section 162.975.

5. Any and all state costs required to fund special education services for three- and four-year-old children pursuant to this section shall be provided for by a specific, separate appropriation and shall not be funded by a reallocation of money appropriated for the public school foundation program.

6. School districts providing early childhood special education shall give [preference] **consideration to the value of continuing services with Part C providers for the remainder of the school year** when developing an individualized education program for a student who [had] **has** received services pursuant to Part C of the Individuals With Disabilities Education Act[, to continue services with the student's Part C provider, unless this would result in a cost which exceeds the average cost per student in early childhood special education for the district responsible for educating the student] **and reaches the age of three years during a regular school year.** Services provided shall be only those permissible according to Section 619 of the Individuals with Disabilities Education Act.

7. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

208.144. The department of social services shall recognize the first steps system established under sections 160.900 to 160.920, RSMo, as an eligible program and shall pay all claims for reimbursement for Medicaid-eligible children to the first steps system. For those eligible children having other private insurance, the department of social services shall seek insurance reimbursement as appropriate and place those funds in the first steps fund established in section 160.925, RSMo.

376.1218. 1. Each health carrier that offers or issues health benefit plans which are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2006, shall provide coverage for medically necessary early intervention services described in subsection 2 of this section that are delivered by early intervention specialists who are health care professionals licensed by the state of Missouri and acting within the scope of their professions for children from birth to age three identified by the Missouri first steps system as eligible for services under Part C of the Individuals with Disabilities Education Act 20 U.S.C. Section 1431, et seq. Such coverage shall be limited to three thousand dollars for each covered child per policy per calendar year, with a maximum of nine thousand dollars per child. Such coverage shall be further governed by the provisions of subsection 6 of this section.

2. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical therapy, and assistive technology services and devices for children from birth to age three

who are identified by the Missouri first steps system as eligible for services under Part C of the Individuals with Disabilities Education Act 20 U.S.C. Section 1431, et seq., and which are designed to help that individual attain or retain the capability to function age-appropriately within his or her environment. Early intervention services shall include services under an active individualized family service plan that enhance functional ability without effecting a cure. An individualized family service plan is a written plan for providing early intervention services to an eligible child and the child's family that is adopted in accordance with 20 U.S.C. Section 1436. The first steps system, on behalf of its contracted regional first steps centers and providers, shall be considered the rendering provider of services for purposes of this section and shall comply with all of the terms and conditions of the carrier's contracts with similarly situated health care providers.

3. No payment made for specified early intervention services shall be applied by the insurer against any maximum lifetime aggregate or annual limits specified in the policy or health benefit plan if the health carrier opts to satisfy its obligation under this section under subdivision (2) of subsection 6 of this section. Prescribed insurance benefits shall reimburse the Missouri first steps system administered by the lead agency, or its designee, for payments made by the system for the early intervention services as prescribed by the individualized family service plan, upon submission of the individualized family service plan, an electronic claim filed in accordance with the carrier's standards and all other information necessary to establish that the claim is payable. Prescribed insurance benefits shall be billed at the current Medicaid reimbursement rate for each specified eligible service under subsection 2 of this section and shall be reimbursed by the carrier at that rate or at the carrier usual reimbursement rate for the service. Claims filed by or on behalf of the first steps program are not subject to sections 376.383 to 376.384.

4. The health care service required by this section shall not be subject to any greater deductible or copayment than other similar health care services provided by the health benefit plan.

5. A health carrier or health benefit plan subject to the provisions of this section shall also provide reimbursement to the department of social services for claims filed on behalf of eligible children under the Missouri first steps system who are insureds of a health benefit plan under this section. Any reimbursement made to the department shall be applied to the dollar maximums specified in this section and other provisions of this section.

6. (1) Payments made during a calendar year by a health carrier subject to the provisions of this section to the lead agency or to other entities entitled to

payment under the provisions of this section for services provided to children covered by the Missouri first steps program shall not exceed one-half of one percent of the health carrier's net direct written health care premium, less premium earned from policies or contracts described in subsection 8 of this section, as reported to the department of insurance on the carrier's most recently filed annual report as of the start of the calendar year.

(2) In lieu of reimbursing claims under this section, a carrier, or carriers affiliated by common ownership or control, may directly pay the lead agency by January 31 of the calendar year one-half of one percent of the amount of its capped liability or five hundred thousand dollars, whichever is less and such payment shall constitute full and complete satisfaction of the health carrier's obligation for the calendar year.

7. All carriers subject to the provisions of this section shall have the right to audit claims payments to the lead agency or its designees and the department of social services to verify:

(1) The eligibility of their insured or enrollees for first steps program services;

(2) That the services were performed by a licensed health care professional;

(3) That the services billed were rendered;

(4) That the services rendered were medically necessary and performed in the appropriate clinical setting; and

(5) Any other requirements of the carrier's health benefit plan or plans.

The lead agency or its designees and the department of social services shall refund any paid claim for reimbursement that fails to meet the terms of the health benefit plan. This right to audit and reimbursement shall be waived by a carrier making payment under subdivision (2) of subsection 6 of this section.

8. This section shall not apply to a supplemental insurance policy, including a life care contract, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, hospitalization-surgical care policy, long-term care policy, or short-term major medical policies of six months or less duration.

Section B. Because immediate action is necessary to ensure the continuation of early intervention services to infants and toddlers with disabilities section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace, and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section A of this act shall be in full force and effect on July 1, 2005, or upon its passage and approval, whichever later occurs.

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